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C O N F I D E N T I A L SECTION 01 OF 02 BAGHDAD 000072

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TAGS: [PREL](#) [PGOV](#) [MARR](#) [MOPS](#) [IZ](#) [NATO](#)
SUBJECT: ACTION REQUEST: MANAGING NATO EXPECTATIONS FOR
FUTURE NTM-I LEGAL AGREEMENT

REF: A. USNATO 000006
[1](#)B. USNATO-BAGHDAD POL-MIL EMAILS 7-9 JANUARY 2009

Classified By: Ambassador Ryan C. Crocker for reasons 1.4 (b) and (d).

[1](#)1. (U) This is an action request; see paragraphs 6 and 7.

[1](#)2. (C) Summary: According to USNATO (Ref A and B), in the North Atlantic Council (NAC) meeting on 7 January, NATO member states proposed to send Assistant Secretary General for Operations Howard and Legal Advisor DeWidts to Baghdad to clarify the legal status of the NATO Training Mission-Iraq (NTM-I) and pursue a new security agreement with the Government of Iraq (GOI). In light of the difficulties Post anticipates NATO would face pursuing a legal agreement equivalent to the U.S.-Iraq security agreement, as some member states called for, Post recommends that USNATO seek to manage member states' expectations by impressing upon them what Post assesses to be their viable options. These include either continued reliance on the 21 December 2008 exchange of letters with National Security Advisor al-Rubaie or acceptance of most likely more limited legal protections in a new agreement. Post supports NATO's desire to send representatives to explore their options directly with the GOI, but assesses NATO's best chances for a stronger future legal arrangement lie in approaching the GOI gradually and without unrealistic initial demands. Post also recommends a demarche to the Italian Government to impress upon them the importance of their continued participation in NTM-I and to seek to assuage their concerns. End Summary.

[1](#)3. (C) NTM-I is currently operating on the basis of an exchange of letters (EOL) with Iraqi National Security Advisor Dr. al-Rubaie on behalf of the GOI, which some (including the Iraqi Prime Minister's legal advisor) find ambiguous, in addition to the subsequent Iraqi Council of Representatives (COR) Resolution 50 of 23 December 2008. The Rubaie EOL provides assurances that NTM-I will be accorded all the authorities, immunities, and exemptions contained in the U.S.-Iraq Security Agreement. The Iraqi Prime Minister's legal advisor has said that he does not consider the EOL to be a legally binding international agreement, as it was not approved by the COR and was superseded by COR Resolution 50. Rubaie assured NATO Assistant Secretary General for Operations Howard on 8 January in Washington, however, that the EOL had been initialed and approved by the Iraqi PM and was binding on the GOI. COR Resolution 50 establishes the legal authorities and immunities of remaining Coalition forces, including NTM-I, pending their withdrawal by July 31, [1](#)2009. These immunities fall short of those provided in the U.S.-Iraq Security Agreement, giving the GOI more authority to prosecute Coalition forces than U.S. forces when those forces commit acts outside of agreed facilities and military installations.

¶4. (C) According to USNATO (Ref A, B and earlier communications), some NATO members have expressed concern, on the one hand, about the uncertainty as to whether the GOI plans to uphold the broader legal protections under the Rubaie EOL and, on the other, the inadequacy of the protections offered by the COR Resolution. We understand that at the NAC meeting on 7 January, some members indicated that if they do not achieve a new agreement confirming the same legal protections as the U.S.-Iraq Security Agreement, they will withdraw their forces by July 31, 2009. Given these concerns, we understand NATO is planning to send Howard and Legal Advisor DeWidts to Baghdad at the end of January to seek confirmation of the commitments provided by the Rubaie EOL and to pursue negotiations for a new agreement that will govern NTM-I's future status and role beyond July 31, 2009.

¶5. (U) In Embassy Baghdad's view, pursuing a new agreement is not without risks. The PM's legal advisor has said that the GOI has no constitutional basis for concluding legally binding executive agreements with foreign states; all treaties must be approved by the COR, increasing the scrutiny of and political pressure on negotiations involving foreign troops and Iraqi sovereignty. The Iraqi Council of Ministers (COM) authorized the Minister of Defense, on behalf of the GOI, to conclude Memorandums of Understanding (MOUs) with remaining Coalition and NATO member states on the basis of a template drafted by the PM's legal advisor. The COM has given the MOD discretion to negotiate only two things with the Coalition states and NTM-I: (1) their respective tasks and activities; and (2) their facilities and bases. The MOD has made clear that it cannot negotiate any other issues, including jurisdictional issues. When concluding MOUs with

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the UK and Australia, the MOD hewed closely to the COM-approved template. Romania's draft MOU, moreover, remains stalled because of its demand for a single, unexceptional sentence affirming Iraq and Romania's international legal obligations in the field of human rights. Bottom line: the MOD has little flexibility to negotiate without going back to the COM.

¶6. (C) Post thus recommends that USNATO impress upon NATO member delegations the obstacles they face under Iraq's current legal framework and political environment, and our analysis of NATO's realistic near-term options as they prepare to send Howard and DeWidts to Baghdad:

¶A. Members may choose to continue relying on the Rubaie EOL, which offers the broadest assurances available and constitutes a strong political commitment from the Prime Minister's office, while accepting the uncertainty of its ambiguous legal standing from the perspective of some authorities in the GOI. Howard and DeWidts could seek to engage the GOI in discussions about NTM-I's future role in Iraq without asking for official, written confirmation of the EOL, which might involve other GOI authorities and invite them to contradict Rubaie's assessment of its standing. A new Exchange of Letters with Rubaie, with a text that might be even more to NATO's liking, might sound attractive but would suffer from the same ambiguity.

¶B. Alternatively, NATO may choose to seek explicit confirmation from the GOI of NTM-I's legal status and pursue a more certain legal agreement for the mission relatively soon, in which case they will most likely obtain only the protections provided by COR Resolution 50. In the latter option, NTM-I may have to accept the withdrawal of personnel from those member states who do not consider the COR Resolution protections sufficient for their continued participation.

¶C. The NATO negotiating team may pursue a staged approach to NTM-I's future, if members can accept relying on the Rubaie EOL for the near term. Negotiating a new agreement that is

substantively different from the COM-approved draft MOU would likely take at least several months and involve multiple Iraqi authorities with varying agendas. Post recommends at the least that NATO explore arrangements for NTM-I's future at a measured pace that does not invite GOI officials to declare NATO's desired agreement impossible from the start, nor entangle NTM-I's status with the remaining Coalition member negotiations, particularly given the sensitivity of the public to issues involving foreign troops as Iraq prepares for provincial elections at the end of January.

17. (C) Given the possibility that some NATO members may be compelled to withdraw, we judge it essential that NTM-I retain the participation of the Italian forces, who are conducting indispensable training of Iraqi Security Forces, both in quantity of contributed forces and in the unique competencies provided by the Italian Carabinieri. Post recommends that Department and/or Embassy Rome demarche the Italian Government to impress upon them the keystone role played in NTM-I by the Italian contingent - and the continued commitment of the U.S. to ensure Coalition partners do not face undue legal or political risks while supporting the mission in Iraq.

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